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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LOUIS R. CRUZ,

Petitioner,

v.

H.S. KNIGHT, Director,
United States Secret Service,

Respondent.

AMICUS CURIAE BRIEF

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INDEX

Page

The Interest of the Amicus Curiae 1

Argument 1

Conclusion 3

TABLES OF CASES, etc.

Bullard v. Webster, 623 F. 2d 1042,
(5th Cir. 1980) 2

Leefer v. Administrator, NASA, 543 F. 2d 209
(D.C. Cir. 1976) 2

THE INTEREST OF THE AMICUS CURIAE

The Federal Law Enforcement Officers Association, the *amicus curiae* herein is a nationwide organization of approximately 5,000 federal law enforcement officers. Its purposes include the mutual advancement of law enforcement officers and the promotion of its members' welfare. The Association also provides a vehicle through which federal law enforcement officers may collectively speak on matters affecting their welfare.

Counsel for the respective parties have graciously consented to permitting the Federal Law Enforcement Officers Association to file this brief. The matters raised in the within action are of great concern to all federal law enforcement officers. The rights of employees facing reassignments together with the circumstances under which they may challenge a reassignment are matters of ever increasing concern to our Membership. Substantial private rights are involved. The Federal Law Enforcement Officers Association believes that the fullest airing possible should be given to this most important issue especially in light of conflicting lower court cases involving the extent to which an employee reassignment may be judicially reviewable.

ARGUMENT

The *amicus curiae*, Federal Law Enforcement Officers Association, can add little to the arguments of petitioner. However, some points must be emphasized.

Firstly, it is important to note that the petitioner does not ask this Court to undertake a full substantive review of respondent's determination. However, petitioner does pray that this Court ensure that his procedural rights were satisfied. This, the Court must do.

Even those cases which have determined that employee reassignment matters are generally not judicially reviewable have recognized that an exception lies when there is a question of procedural regularity. *Bullard v. Webster*, 623 F. 2d 1042 (5th Cir. 1980); *Leefer v. Administrator, NASA*, 543 F. 2d 209 (D.C. Cir. 1976). For example, the court in *Leefer* while recognizing that federal agencies have broad authority to reassign their employees nevertheless ruled:

> Discretion primarily lies in the hands of the administrative agencies involved, and the courts will not substitute their own judgment for that of the agency's. Review is thus limited to whether the agency denied the employee his appropriate procedural rights and whether the decision to remove the employee was arbitrary and capricious. *Id.* at 214.

That federal employees be afforded their procedural rights is most important. These protections ensure that an agency will not be permitted to hide behind vague assertions which would not find a scintilla of support in the record or in common sense. A review of petitioner's case indicates that respondent has never defined the "need" to reassign petitioner. Respondent has not shown which aspects of petitioner's training, experience and value necessitates his transfer despite the extensive counterbalancing factors which have been well documented.

The grievance procedural safeguards which have been provided to petitioner seeks to prevent this problem. Agencies must supply some accountability to their agencies. Petitioner is not asking for anything other than that which he is entitled. He is merely attempting to compel the respondent to adhere to its own regulations. Unfortunately, the respondent has heretofore refused to do so.

Should this Court not grant the petition; all agencies will have a

license to disregard with impunity the fundamental procedural regulations that they themselves create. This occurrence will be most dangerous to all government employees. Thus, for reasons stated in the petition, a writ of certiorari should issue.

CONCLUSION

The *amicus curiae*, Federal Law Enforcement Officers Association, respectfully requests that this Honorable Court should issue a writ of certiorari to review the judgment and order of the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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